

**United States Department of Labor
Employees' Compensation Appeals Board**

MARIO MAURIELLO, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
North Haven, CT, Employer**

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**Docket No. 04-309
Issued: June 28, 2004**

Appearances:
Mario Mauriello, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On November 17, 2003 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated August 4, 2003 denying his emotional condition claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has met his burden of proof to establish that he sustained an emotional condition in the performance of duty.

FACTUAL HISTORY

On July 3, 2001 appellant, then a 61-year-old window clerk, filed an occupational disease claim alleging that he developed stress and anxiety resulting in chest pain followed by uncontrollable shaking and depression due to confrontations with management in the course of his federal employment. Appellant first became aware of his condition and its relation to his work on April 23, 2001. By letter dated April 19, 2001, Alice Strasser, the Officer in Charge

(OIC) controverted the claim and alleged that appellant had a 10-pound lifting restriction, which he intentionally violated while performing his duties because he wanted to avoid being sent home without being paid in order to change into the proper uniform.¹

Accompanying appellant's claim was a narrative statement and chronology of events, outlining the employment factors which allegedly caused or contributed to his condition. Appellant alleged that the employing establishment falsely accused him of faking an injury on April 18, 2001. He stated that, on that date, he sustained a work-related pectoral strain when he was left with no assistance to wait upon a customer with approximately 80 large parcels. Appellant noted that three postal clerks had been sent home to change into their new uniforms and of the remaining two clerks, one was working with one arm and the other was assisting the backlog of customers. Appellant alleged that on April 23, 2001 he experienced anxiety when he received an April 19, 2001 letter from the employing establishment controverting his claim and accusing him of trying to avoid going home on unpaid time to pick up his uniform. He contended that he had just received his new uniform, which was on the premises. Appellant showed the letter to a coworker who questioned its validity with appellant's superior, Ronald Roy, as she was aware that the superior knew that appellant's new uniform was on the premises. Appellant alleged that on April 30, 2001 he was called into Mr. Roy's office and requested to provide a Form CA-17, duty status report for a hand injury. Appellant questioned this request because this was not required previously and his claim was four years old. He also indicated that management had "threatened and badgered" him regarding this on numerous occasions. Appellant subsequently had difficulty obtaining an appointment with his physician and, when he requested assistance, he was told that it was his responsibility. On May 10, 2001 appellant alleged stress when he received a letter of suspension.² On May 30, 2001 he alleged that his superiors scrutinized the time of his lunch break and an argument ensued. Appellant alleged that, on June 6, 2001, a computer problem caused a work interruption, resulting in taking his break in segments and that Mr. Roy verbally admonished him for not telling him what was going on. Appellant felt that he did not need to explain the situation as his supervisor was just a few feet away and aware of the situation.

On June 7, 2001 appellant tried to follow up on the April 30, 2001 request for a Form CA-17. He indicated that Mr. Roy gave him another Form CA-17 and ordered him to reply by June 18, 2001. On June 13, 2001 appellant alleged that he was called into Mr. Roy's office regarding the May 30, 2001 argument. Appellant noted that Ms. Strasser was present and he requested a union steward, but the request was denied. He was advised that managers had the right to manage and there was zero tolerance for yelling at supervisors. Appellant indicated that the same morning he was told that he and a coworker had failed the "mystery shopper visit." Appellant was subsequently advised that all of the clerks had been implicated. Appellant noted that at lunch time on the drive home he began to shake uncontrollably and could not eat. He

¹ The September 10, 1998 report of Dr. Robert B. Tross, a Board-certified plastic surgeon, provided a diagnosis of pesotriquetral synovitis and chondromalacia and specified limitations regarding appellant's window clerk duties; however, no lifting limitation was provided.

² The claim was accompanied by the May 10 and July 2, 2001 notices of suspension.

alleged that, on June 15, 2001, he requested an extension of time in order to comply with the deadline for completion of the Form CA-17.³ However, on June 18, 2001, he was called into the office of Ms. Strasser and advised that there was concern regarding his failure to complete the Form CA-17. He inquired into his request for an extension and was advised that no request had been received.

By letter dated August 16, 2001, the Office requested additional factual and medical information.

In an undated response received by the Office on September 12, 2001, appellant submitted a copy of a July 17, 2001 precomplaint counseling sheet from Donald J. Perednia, an Equal Employment Opportunity (EEO) dispute resolution specialist; a July 2, 2001 notice of suspension and a July 27, 2001 grievance award declaring the suspension null and void.⁴ The award found that the notice of suspension issued to appellant on July 3, 2001 was null and void because management failed to perform a predisciplinary interview prior to issuing the notice of suspension. He provided a July 17, 2001 report from Dr. William Schreiber, Board-certified in internal medicine, who diagnosed work-related stress leading to anxiety, depression and exacerbation of symptoms of Crohn's disease. He also submitted a September 25, 2001 report from Dr. Robert M. Koenig, a clinical psychologist. Appellant noted that he had filed two grievances, one of which had been settled, and an EEO complaint. He indicated that he had no prior emotional condition. He also explained that the date of his injury was April 18, 2003 as opposed to April 23, 2001.

By decision dated February 14, 2002, the Office denied appellant's emotional condition claim on the grounds that he did not establish a compensable factor of employment.⁵

In an undated letter received by the Office on March 14, 2002, appellant requested a hearing, which was held on April 1, 2003. He submitted several witness statements from coworkers and customers. In a November 10, 2002 statement, Ann Campagna, a coworker, alleged that she experienced harassment and verbal abuse by Ms. Strasser. She recalled an incident involving a CA-17 form, in which Ms. Strasser was told that appellant did not need to get an updated form, as he had a permanent restriction. In a July 24, 2002 statement, Anthony Pasqualoni, a coworker, indicated that on April 18, 2001 appellant had a large order that morning

³ The record contains a copy of the June 15, 2001 letter.

⁴ The grievance form indicates the suspension was issued on July 3, 2001; however, it appears to be referring to the July 2, 2001 suspension.

⁵ The Office also identified a potentially compensable factor of employment that involved a grievance that arose from the issuance of a July 2, 2001 suspension letter. The Office noted that the letter was issued for the reason that appellant was charged with improper conduct and on July 27, 2001, the matter was resolved via a grievance resolution indicating management had erred when appellant was issued the suspension letter because management had "failed to perform a pre-disciplinary interview prior to issuing" the disciplinary letter. The Office also noted that the matter was settled due to a technicality and not an error of fact, that there was no evidence of error or abuse on the part of the employing establishment. They also found that the employing establishment did not act unreasonably in the administration of a personnel matter. The Board notes that this occurred one year after the instant claim was filed.

and requested assistance. He noted that three coworkers were sent home that morning and appellant was not sent home, despite wearing his old uniform. Mr. Pasqualoni stated that it was common knowledge that appellant was given the wrong uniform. Appellant also submitted statements dated June 7, 12, 15 and 25, 2002 from postal customers, who indicated that he was always polite, professional and courteous. In a duty status report dated August 19, 1998, a physician whose signature is illegible, noted that appellant had a 40-pound lifting restriction.⁶ Appellant submitted an April 20, 1998 letter of appreciation from the postmaster and a July 24, 2003 expedited arbitration panel decision concerning discipline for exceeding his lifting restrictions. The decision found that there was just cause to discipline appellant.

By decision dated August 4, 2003, an Office hearing representative affirmed the February 14, 2002 decision, finding that appellant failed to establish any compensable factors of employment.

LEGAL PRECEDENT

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.⁷ On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or his frustration from not being permitted to work in a particular environment or to hold a particular position.⁸

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition, for which he claims compensation was caused or adversely affected by employment factors.⁹ This burden includes the submission of a detailed description of the employment factors or conditions, which appellant believes caused or adversely affected the condition or conditions, for which compensation is claimed.¹⁰

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, the Office, as part of its adjudicatory function, must make findings of fact regarding, which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and, which working conditions are not deemed

⁶ This was in regard to a hand injury.

⁷ 5 U.S.C. §§ 8101-8193.

⁸ See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

⁹ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

¹⁰ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

factors of employment and may not be considered.¹¹ If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.¹²

ANALYSIS

In the present case, appellant alleged that he sustained an emotional condition as a result of a number of employment incidents and actions. The Office denied appellant's emotional condition claim on the grounds that he did not establish any compensable employment factors. The Board must initially review whether the alleged incidents and conditions of employment are established as compensable employment factors under the terms of the Act.

Many of appellant's allegations of employment factors that caused or contributed to his condition fall into the category of administrative or personnel actions. In *Thomas D. McEuen*,¹³ the Board held that an employee's emotional reaction to administrative actions or personnel matters taken by the employing establishment is generally not covered under the Act as such matters pertain to procedures and requirements of the employer and do not bear a direct relation to the work required of the employee. The Board noted, however, that coverage under the Act would attach if the factual circumstances surrounding the administrative or personnel action established error or abuse by the employing establishment.¹⁴ Absent evidence of such error or abuse, the resulting emotional condition is considered self-generated and not employment generated.¹⁵ The incidents and allegations made by appellant, which fall into this category of administrative or personnel actions include: being reprimanded or disciplined for work error or failure to perform work duties regarding the April 18, 2001 incident involving new uniforms and lifting heavy packages; anxiety caused by the April 19, 2001 controversion letter; being requested to provide a Form CA-17 on April 30 and June 7, 2001; the May 10, 2001 suspension letter; management scrutiny of appellant's lunch break; and his interrupted lunch break, the May 30, 2001 yelling incident and subsequent management discussions; and issues concerning request for extension of time to file a Form CA-17. Appellant has presented insufficient evidence to establish administrative error or abuse. The record does not establish that the employing establishment acted abusively in controverting his claim, requesting a Form CA-17, issuing suspension letters, scrutinizing his lunch breaks or discussing inappropriate behavior such as yelling. Therefore, these allegations do not constitute compensable employment factors.

¹¹ See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

¹² *Id.*

¹³ 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

¹⁴ See *Richard J. Dube*, 42 ECAB 916 (1991).

¹⁵ *Sandra Davis*, 50 ECAB 450 (1999).

Appellant further alleged that he developed an emotional condition due to management harassing him. Appellant alleged that he was threatened and badgered on several occasions for information regarding his duty status report and his physical restrictions. The request for forms is considered administrative. For harassment to be considered a compensable factor of employment, there must be some evidence that the implicated acts of harassment did, in fact, occur. Mere perceptions of harassment or discrimination are not compensable under the Act. A claimant must establish a factual basis for allegations that the claimed emotional condition was caused by factors of employment.¹⁶ Appellant has not done so here. He has not substantiated that the actions of the employing establishment constituted harassment. Appellant therefore has not established that the administrative actions he alleged as the cause of his emotional condition were compensable factors of employment.

Appellant further alleged that his employer accused him of faking an injury on April 18, 2001. A false accusation by an administrative official could be error and abuse on the part of the employing establishment. However, appellant did not provide sufficient supporting evidence or testimony. Although he provided a witness statement from two coworkers regarding the circumstances on that date, the coworkers did not confirm that the allegations were false. Ms. Campagna provided her observations as to management actions without supporting that appellant was accused of faking an injury. Mr. Pasqualoni merely indicated that it was common knowledge that appellant was provided with the wrong uniform but did not support any accusation of faking an injury. Furthermore, the employing establishment challenged his claim and there is no evidence that the OIC, Ms. Strasser, was aware that appellant had his uniform on the premises. There is no supporting evidence or testimony to suggest that the challenge would constitute a false allegation.

Regarding the potentially compensable factor of employment with respect to the July 27, 2001 grievance resolution form, the award indicated that management failed to perform a pre-disciplinary interview prior to issuing the notice of suspension. The notice was, therefore, declared null and void and removed from appellant's record. Appellant did not show that the actual reason for the suspension was invalid, nor did he establish error or abuse. The fact that the personnel action is lessened or modified does not, in itself, establish that the employing establishment's actions were either erroneous or unreasonable.¹⁷

CONCLUSION

The Board finds that appellant has not established any compensable employment factors under the Act and, therefore, has not met his burden of proof in establishing that he sustained an emotional condition in the performance of duty.¹⁸

¹⁶ *Joan Juanita Greene*, 41 ECAB 760 (1990).

¹⁷ *See Sherry L. McFall*, 51 ECAB 436, 440; *Garry M. Carlo*, 47 ECAB 299, 304 (1996).

¹⁸ As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; *Barbara J. Latham*, 53 ECAB ____ (Docket No. 99-517, issued January 31, 2002); *Judy L. Kahn*, 53 ECAB ____ (Docket No. 00-457, issued February 1, 2002); *Alice F. Harrell*, 53 ECAB ____ (Docket No. 01-1249, issued August 1, 2002); *Janice I. Moore*, 53 ECAB ____ (Docket No. 01-2066, issued September 11, 2002); *see Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

ORDER

IT IS HEREBY ORDERED THAT the August 4, 2003 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: June 28, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member